



SAN FRANCISCO DISTRICT

PUBLIC NOTICE

Regulatory Branch
333 Market Street
San Francisco, CA 94105-2197

NUMBER: 27317N DATE: February 5, 2005
RESPONSE REQUIRED BY: March 7, 2005

PERMIT MANAGER: Mark D'Avignon PHONE: 415-977-8507 Email: Mark.R.D'Avignon@spd02.usace.army.mil

1. INTRODUCTION: Mr. David Casty; DSL Service Company, 3501 Jamboree Road, the North Tower, Suite 5000, Newport Beach, CA 92660 [Contact: John Zentner, Zentner and Zentner, 95 Linden Street, Ste. 6, Oakland, CA 94607, 510-622-8110] has applied for a Department of the Army permit to place approximately 2,100 cubic yards of fill into 0.37 acres of jurisdictional waters of the United States (seasonal wetlands and intermittent tributary channel) for the purpose of constructing the Deer Creek Plaza project located adjacent to Highway 101 in Petaluma, Sonoma County, California. This application is being processed pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. 1344).

2. PROPOSED PROJECT:

Project Site: The Deer Creek Plaza project site includes 36.55 acres and is located in southern Sonoma County, in the northern portion of Petaluma, along the east side of Highway 101 on an unsectioned part of the Petaluma Land Grant, Range 7 West, Township 5 North on the Cotati 7.5 minute USGS topographic map. The site consists of APN Numbers 007-380-027 and 007-380-005. No street address has been provided but North McDowell Boulevard runs along the northeast side of the proposed project site; Lynch Creek Parkway is a short block southeast from the southeast end of the site; and Transport Way is a short block northwest from the northwest end of the site.

The proposed development site is a relatively flat undeveloped parcel within an area of light industrial, residential and office uses. Most of the site is weedy annual grassland with several native and non-native trees along the edges. The site's jurisdictional wetlands and waters consist of a 1000 foot long straightened intermittent tributary channel that cuts through the western third of the site and two seasonal marshes. The intermittent tributary and seasonal wetlands combine for a total of 0.38 acre of Corps jurisdictional area on the proposed project site.

The intermittent tributary channel has a very small watershed above the project site (4.1 acres) and flows to the site via a 21" diameter concrete pipe under McDowell Blvd. This pipe connects to the intermittent tributary, which flows through twin culverts under Highway 101 to a drainage channel that flows through undeveloped land to the west before finally reaching the Petaluma River.

Vegetative communities present on the proposed development site (in dominance order) include annual grassland, dominated by non-native species; the intermittent tributary channel, with a mix of non-native and native hydrophytic plant species such as *Polypogon monspeliensis*, *Mentha puligeum*, *Picris echioides*, *Juncus effusus*, *Rumex* sp., *Juncus xiphioides*, and *Erygium aristulatum*; and two small seasonal marshes that are dominated by non-native hydrophytic plant species such as *Lolium multiflorum*, *Hordeum marinum*, *Ranunculus muricatus*, *Phalaris paradoxa*, *Rumex*

crispus, *Lythrum hyssopifolia*, *Pleuropogon californicus*, *Juncus bufonius*, *Picris echioides*, *Juncus xiphiodes*, and *Mentha puligeum*.

Project Description: The proposed Deer Creek Plaza project would result in the construction of retail commercial businesses and associated infrastructure in the City of Petaluma. Fifteen retail commercial business sites ranging from 3,500 to 135,000 sq. ft would be developed around the site. Parking lots and other infrastructure would be located throughout the site.

The project would extend Rainier Avenue south of McDowell Boulevard to connect to the proposed development site. The project also proposes creating a signalized intersection at one of the McDowell Boulevard entrances into the site.

Purpose and Need: The applicant states that the purpose of the project is to develop retail commercial businesses. The applicant also states that the project is necessary because of the need for local retail services and the loss of local retail revenues.

Impacts to Corps Jurisdiction: The proposed project would permanently fill the intermittent tributary channel on-site (0.21 acre) and 0.16 acre of seasonal wetlands for a total fill impact of 0.37 acre.

Mitigation: The proposed mitigation and monitoring plan for the proposed fill discharge would include preservation of 0.01 acres of seasonal wetlands onsite and construction of a 5.3-acre open space corridor including 1.1 acres of created wet meadow (i.e. freshwater wetland), a new active intermittent drainage channel approximately 1500 feet long and 4 to 5 feet wide, and 4.0 acres of native riparian woodland and oak savannah associations. The relatively high clay content of the soils provides the opportunity to restore a relatively broad wetland meadow associated with the lands

below the 10- to 25-year flood levels to be dominated by creeping wild rye (*Leymus triticoides*) and Santa Barbara sedge (*Carex barbarae*). Lands above this level will be restored to valley oak savanna. Reference sites in the local area were used to design the proposed wetlands to be constructed.

In addition, bioswales would be constructed in the open space corridor to treat water flowing from the development area to the preserved and constructed wetlands. Finally, all restored and preserved wetlands would be monitored and maintained for a period of 5 years. Long-term maintenance and management of the restored wetlands would rest with the Commercial Property Owner's Association, which will be provided with an endowment to continue these operations. An open space conservation easement would be dedicated over the mitigation lands by DSL Service Company in favor of the city.

3. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

National Environmental Policy Act of 1969 (NEPA): The Corps will assess the environmental impacts of the proposed action in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. Section 4371 et. seq.), the Council on Environmental Quality's Regulations, 40 C.F.R. Part 1500-1508, and Corps' Regulations, 33 C.F.R. Part 230 and 325, Appendix B. Unless otherwise stated, the Environmental Assessment will describe only the impacts (direct, indirect, and cumulative) resulting from activities within the Corps' jurisdiction. The documents used in the preparation of the Environmental Assessment will be on file with the U.S. Army Corps of Engineers, San Francisco District, Regulatory Branch, 333 Market Street, San Francisco, California 94105-2197.

Endangered Species Act of 1973 (ESA): Section 7 of the Endangered Species Act requires formal consultation with the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS) if a Corps permitted project may adversely affect any Federally listed threatened or endangered species or its designated critical habitat. At present, no Federally listed threatened or endangered species are known to exist on the project site.

Magnuson-Stevens Fisheries Conservation and Management Act: NMFS and several interagency fisheries councils have designated specific water bodies as Essential Fish Habitat (EFH) in accordance with the Magnuson-Stevens Fisheries Conservation and Management Act. There are no specific EFH concerns associated with this proposal include. However, coordination with the NMFS in regard to EFH would be initiated concurrently with the ESA consultation, if necessary.

Clean Water Act of 1972 (CWA):

a. Water Quality: Under Section 401 of the Clean Water Act (33 U.S.C. Section 1341), an applicant for a Corps permit must first obtain a State water quality certification before a Corps permit may be issued. The applicant has provided the Corps with evidence that he has submitted a valid request for State water quality certification to the San Francisco Bay Region Regional Water Quality Control Board. No Corps permit will be granted until the applicant obtains the required water quality certification. The Corps may assume a waiver of water quality certification if the State fails or refuses to act on a valid request for certification within 60 days after the receipt of a valid request, unless the District Engineer determines a shorter or longer period is reasonable for the State to act.

Those parties concerned with any water quality issues that may be associated with this project should write to the Executive Officer, California Regional Water

Quality Control Board, San Francisco Bay Region, 1515 Clay Street, Suite 1400, Oakland, California 94612 by the close of the comment period of this Public Notice.

b. Alternatives: Evaluation of this proposed activity's impact includes application of the guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b)(1) of the Clean Water Act (33 U.S.C. Section 1344(b)). The applicant has submitted an Analysis of Alternatives for the project and it will be reviewed for compliance with the guidelines. The applicant states that there are no practicable alternatives for his project. An evaluation has been made by this office under the guidelines and it was determined that the proposed project is not water or wetland dependent. The applicant has not submitted an Analysis of Alternatives and has been informed that such an Analysis is required and will be reviewed for compliance with the guidelines.

Coastal Zone Management Act of 1972 (CZMA): Section 307 of the Coastal Zone Management Act requires the applicant to certify that the proposed project will comply with the State's Coastal Zone Management Program, if applicable. The proposed project is located outside the Coastal Zone, therefore no Coastal Zone permit would be required for the proposed development.

National Historic Preservation Act of 1966 (NHPA): Based on a review of survey data on file with various City, State and Federal agencies, no historic or archeological resources are known to occur in the project vicinity. If unrecorded resources are discovered during construction of the project, operations will be suspended until the Corps completes consultation with the State Historic Preservation Office (SHPO) in accordance with Section 106 of the National Historic Preservation Act.

4. PUBLIC INTEREST EVALUATION: The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impact, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits that reasonably may be expected to accrue from the proposed activity must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered, including its cumulative effects. Among those factors are: conservation, economics, aesthetics, general environmental concerns, wetlands, historical properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

5. CONSIDERATION OF COMMENTS: The Corps of Engineers is soliciting comments from the public, Federal, State and local agencies and officials, Indian Tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest in the proposed activity.

6. SUBMISSION OF COMMENTS: Interested parties may submit, in writing, any comments

concerning this activity. Comments should include the applicant's name and the number and the date of this Public Notice, and should be forwarded so as to reach this office within the comment period specified on Page 1. Comments should be sent to the U.S. Army Corps of Engineers, San Francisco District, Regulatory Branch, 333 Market Street, San Francisco, California 94105-2197. It is the Corps' policy to forward any such comments that include objections to the applicant for resolution or rebuttal. Any person may also request, in writing, within the comment period of this Public Notice that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Additional details may be obtained by contacting the applicant whose name and address are indicated in the first paragraph of this Public Notice or by contacting Mark D'Avignon of our office at telephone 415-977-8507 or at the following email address: Mark.R.D'Avignon@spd02.usace.army.mil. Details on any changes of a minor nature which are made in the final permit action will be provided upon request.